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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/087,513	05/29/1998	YUTARO KANEKO	0010-0929-0X	9631

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EXAMINER

WILSON, MICHAEL C

ART UNIT PAPER NUMBER

1632

DATE MAILED: 02/26/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.
09/087,513

Applicant(s)
Kaneko et al.

Examiner
Michael C. Wilson

Art Unit
1632



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED _____ FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Dec 5, 2001. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: see attached

4. ☐ Applicant's reply has overcome the following rejection(s):

5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).

6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see attached

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 14, 15, 19, and 20

9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.

10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

11. ☐ Other: _____

MICHAEL C. WILSON
PATENT EXAMINER

MICHAEL C. WILSON
PATENT EXAMINER
ART UNIT 1632

Art Unit: 1632

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1632.

The amendment has not been entered because it would raise new issues not previously required. The deletion described in claim 14, 24 and 26 would require an indefiniteness rejection. A double patenting rejection would be required because a number of the claims are substantial duplicates.

Applicants argue the specification teaches how to make the vector. Applicants argument is not persuasive because it cannot be determined which nucleotides are deleted. The specification does not teach which nucleic acids are 297-329 and such nucleotides cannot be determined from the art. Are the numbers describing the V3 loop or the HIV IIIB genome? Did nucleotides 297-329 have an art accepted meaning at the time the invention was made?

Applicants argue the specification teaches how to make variants of the Δ V3 vector. Applicants argument is not persuasive because the specification does not provide the method used to make the variants or provide the structure of the variants.

Applicants argue the specification enables obtaining a cellular or humoral immune response against HIV using the vaccine claimed. Applicants argument is not persuasive. The only disclosed enabled use for obtaining a cellular or humoral immune response is to treat or prevent HIV. A cellular or humoral immune response that does not prevent or treat HIV does not

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have a disclosed use that is enabled. Applicants do not provide adequate guidance to obtain an immune response in a patient that is therapeutic or prophylactic.

Inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wilson who can normally be reached on Monday through Friday from 9:00 am to 5:30 pm at (703) 305-0120.

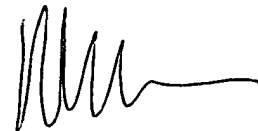
Questions of formal matters can be directed to the patent analyst, Dianiece Jacobs, who can normally be reached on Monday through Friday from 9:00 am to 5:30 pm at (703) 305-3388.

Questions of a general nature relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

If attempts to reach the examiner, patent analyst or Group receptionist are unsuccessful, the examiner's supervisor, Deborah Clark, can be reached on (703) 305-4051.

The official fax number for this Group is (703) 308-4242.

Michael C. Wilson



MICHAEL C. WILSON
PATENT EXAMINER